HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.930 of 2006

-

-

Between:

S.V.V.P.V.M.C. Mahila Vidya Peeth,
1st Grade Women's College, Muvvalavanipalem,
Visakhapatnam – 17, represented by its
Correspondent

……Appellant

And

Smt. M.D.Soujanya and three others

……Respondents

:: JUDGMENT ::

Counsel for the Appellant : Shri P.V.Sanjay Kumar

September 27, 2006

Per C.V. NAGARJUNA REDDY, J

This appeal is directed against order dated 24-1-2006 passed by the learned Single Judge whereby he allowed the writ petition filed by respondent Nos.1 and 2 and directed the appellant herein to pay them salary in accordance with Rule 7 (4) of the Rules notified by the State Government vide G.O.Ms.No.29, dated
5-2-1997.

The appellant is an aided private college established by Sri Venkateswara Vidya Peeth pursuant to permission granted by the State Government vide G.O.Ms.No.550, Education (J) Department, dated 22-7-1980. Respondent Nos.1 and 2, who possess Post Graduate Degrees in M.Sc. Zoology and M.Sc. Physics respectively apart from the degrees of M.Phil., were appointed in the services of the appellant college in 1988 and 1991. Respondent No.1 was appointed in the appellant college as lecturer in the Department of Zoology w.e.f. 1-8-1988 on consolidated pay of Rs.600/-. Likewise, respondent No.2 was appointed as temporary lecturer in Physics w.e.f. 16-8-1991 on consolidated salary. At the time of appointment of respondent No.1, the Andhra Pradesh College Service Commission Act, 1985 (for short, 'the 1985 Act) was in force and recruitment to the post of lecturer could be made only through the agency of College Service Commission. The 1985 Act was amended in 1990 and the private colleges were excluded from the purview of the College Service Commission. After about one year, the State Government issued G.O.Ms.No.12, Education (CEI-2) Department dated 10-1-1992 whereby the procedure for selection for appointment of lecturers in private degree and junior colleges was laid down. In pursuance of that G.O., the

appellant issued advertisement for regular recruitment on the posts of Lecturer in Zoology and Physics. Respondent Nos.1 and 2 were interviewed by the Selection Committee which recommended their name. On 13-9-1993, the governing body of the appellant college approved the selection. Thereafter, both the respondents were appointed as lecturers in Zoology and Physics respectively vide proceedings in Rc.No.5/94 dated 13-7-1994. The Andhra University, in its meeting held on 11-3-1994, approved the appointments of respondent Nos.1 and 2 and communicated the same to the appellant vide its letter No.C-II(2)/1816/90 dated
1-7-1994.

After their appointment, pursuant to the recommendations made by the Selection Committee and approval granted by the Andhra University, respondent Nos.1 and 2 represented to the management of the college and the State Government to pay them salary at par with lecturers appointed in the government colleges. They invoked the provisions of the Andhra Pradesh Private Educational Institutions Grant-in-Aid (Regulations) Act, 1988 and Rule 7 (4) of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987 and pleaded that even after their regular appointment, the management was not paying them salary at par with regular employees and, in this manner, they were being discriminated.

In the counter-affidavit filed by Shri B.V.V. Ramakrsihna Rao, Special Officer-cum-Incharge of the appellant college, it was admitted that the college had been admitted to grant-in-aid in the year 1990, but the claim of respondent Nos.1 and 2 was controverted on the premise that the government had extended the benefit of grant-in-aid only to 12 posts of lecturers. It was further averred that in the year 1993 the

temporary staff of the Science Department including the writ petitioners represented to the management that if the posts in which they are working are admitted to grant-in-aid before they are appointed on a regular basis, they would have no chance of securing appointments thereafter and, therefore, they requested the management to undertake selections to appoint them on regular basis following the procedure under G.O.Ms.No.12 dated 10-1-1992. The writ petitioners, according to the averments in the counter-affidavit, assured the management that they would not insist on increasing salary till the posts are admitted to grant-in-aid and that, upon their assurance given in that regard, the management of the appellant college undertook the selections on humanitarian grounds leading to the appointment of the writ petitioners. According to the appellant, the budget for the year 1996-97 manifests a huge deficit even to pay the existing salaries and, despite the assurances given by the writ petitioners that they would not pressurize the management to pay higher scales, they went on illegal strike from 5-8-1996 and instigated a few other temporary lecturers to join them. As their conduct was most reprehensible, they are placed under suspension and were also issued show cause notice as to why their services should not be terminated. However, claims the appellant, the management, on humanitarian grounds agreed to negotiate with the writ petitioners and, on the basis of such negotiations, written agreement was entered into by the writ petitioners with the Secretary of the society running the appellant college on 14-9-1996 wherein the writ petitioners agreed to accept a consolidated salary of Rs.1800/- per month with an annual increase of Rs.50/- from 1-7-1997. According to the appellant, the writ petitioners voluntarily signed the said agreement and that it was only on the basis of the said agreement that action against the writ petitioners was dropped and it

has applied to the government for admitting the B.Sc. in CBZ course to grant-in-aid in the year 1992 and B.Sc. (Computer Science) in 1996 and that the government has so far not taken any positive action on the same. Till the said posts are admitted into grant-in-aid, the appellant is not in a position to pay the government salaries. As and when the posts are admitted to grant-in-aid, the appellant will immediately enhance the pay scales of the lecturers.

Respondent Nos.2 and 3 in the writ petition filed a counter-affidavit enumerating the reasons for not admitting the science sections to grant-in-aid. As appropriate directions in this regard were already issued by the learned Single Judge, it is not necessary for us to refer to those averments contained in the counter. Suffice it to state in this context that respondent Nos.2 and 3 in the said counter-affidavit admitted that the writ petitioners were appointed through a properly constituted selection committee and the reason they have given out for not admitting them to grant-in-aid was that the science section of the appellant college is not admitted to grant-in-aid.

The learned Single Judge, while disposing of the writ petition, directed respondent Nos.2 and 3 to consider the proposal submitted by the appellant for admitting the posts in Science Department to grant-in-aid, take an appropriate decision and communicate the same to the appellant at the earliest, in any event not later than six months from the date of receipt of a copy of the order. While doing so, the learned Judge, however, held that failure of the institution to receive financial assistance from the government, does not relieve the management of its obligations to pay proper salary and other benefits imposed upon them by law and that the appellant is duty bound under Rule 7 (4) of the Rules notified in G.O.Ms.No.29 dated 5-2-1987 to pay salaries to its staff as per the government scales of pay. Accordingly, a direction

in this regard as noted hereinbefore was issued, which is the subject matter of this writ appeal.

Sri P.V. Sanjay Kumar, learned counsel for the appellant, strenuously contended that as the college is not admitted to grant-in-aid in respect of the Science section, the direction issued by the learned Single Judge to pay regular pay scales to respondent Nos.1 and 2 is not sustainable. Having executed an agreement on 14-9-1996 wherein they have unequivocally undertaken not to claim salary, it lies ill in the appellant's mouth to turn round and claim government pay scales till the posts are admitted to grant-in-aid.

On the other hand, Sri D.V. Sitarama Murthy, learned counsel for respondent Nos.1 and 2 – writ petitioners resisted these two contentions and pleaded that the direction given by the learned Single Judge to pay the writ petitioners the applicable government scales, is in conformity with law and that the same does not suffer from any patent error warranting interference by this Court in exercise of its Letters Patent jurisdiction.

We have given our earnest consideration for the rival contentions advanced on behalf of the parties. As regards the first contention of Sri Sanjay Kumar, it is necessary to extract Rule 7 (4) of the Rules, which reads as follows:

> "**PAYMENT OF SALARIES TO STAFF:-** The educational agency of any private institution shall pay salaries to its staff as per the government scales of pay and by following such procedure as may be prescribed by government from time to time, in this regard."

The afore-extracted rule, which provides for payment of salaries by the educational agency of any private institution to its staff as per the government scales of pay in no uncertain terms, obligates the appellant to pay to its staff the salaries and allowances as prescribed

by the government. This condition, as regards the payment of government scales has no nexus with nor is dependent upon the appellant institution receiving grant-in-aid. It is, therefore, impermissible for the appellant to rely upon the factum of its Science Department not being admitted into grant-in-aid as a reason for denying government scales to respondent Nos.1 and 2. There is an absolute obligation cast upon the appellant to pay the government scales and the appellant cannot be allowed to search for excuses to deny this benefit to respondent Nos.1 and 2.

The second contention of Sri Sanjay Kumar is referred only to be rejected. The agreement pleaded by the appellant does not fit into any legal scheme as the law does not recognize such an agreement, which is contrary to the statutory rule and one of the very conditions subject to which the appellant is allowed to come into existence.

The sequence of events narrated in the counter-affidavit filed in the writ petition by the appellant clearly suggests that while respondent Nos.1 and 2, who hold M.Sc., M.Phil qualifications were agitating for their legitimate right for payment of government scales, they were suspended and at that point of time the so-called agreement not to insist on payment of government scales came into being.

In our opinion, Rule 7 (4) and clause (f) of G.O.Ms.No.550 dated 22-7-1980 have salutary purpose. It is common knowledge that private educational institutions, which are proliferating year after year, are turning into commercial ventures for which profit making is the sole motto. Persons with high academic qualifications including Doctorate are exploited by the managements by paying pittances to them, despite the fact that most of these educational institutions earn huge profits. It is obviously to prevent this exploitation that the government thought it fit to stipulate clause (f) as a condition while granting

permission to start the institutions and later framed Rule 7 (4) providing for payment of government scales to the teaching staff working in the private educational institutions.

Therefore, in our opinion, Rule 7 (4) is conceived in public interest and not for the benefit of any individual. Even if respondent Nos.1 and 2 signed the agreement in a "take it or leave it" situation leaving them with no other choice, but to meekly submit to the unreasonable demand of the employer, such an agreement does not constitute an estoppel or waiver against seeking implementation of Rule 7 (4) of the Rules. In the context of non-supply of documents in disciplinary proceedings, the Supreme Court in **STATE BANK OF PATIALA v. S.K. SHARMA**[1] held that the plea of waiver of requirement of complying with a statutory rule cannot be raised in cases where the rule is conceived in public interest. The learned Single Judge elaborately discussed the case law in this regard in coming to the conclusion that the agreement entered into by respondent Nos.1 and 2 not to claim government salaries, does not constitute waiver. We have no reason whatsoever to come to a different conclusion.

The learned Single Judge has rightly relied upon the judgment of the Division Bench in **Y. SIDDA REDDY v. GOVERNMENT OF A.P.**[2] wherein it was held that whether or not the State extends financial assistance to private educational institutions, the managements of such educational institutions are not relieved of their obligation to pay proper salary and other benefits imposed upon them by law.

The learned Single Judge, in our view, is wholly justified in giving the direction, as aforesaid, for payment of government scales to

respondent Nos.1 and 2 and no interference is called for with the said direction.

For the aforementioned reasons, the writ appeal is dismissed, but in the circumstances without costs.

C.V.NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

27-09-2006

ES

---

[1] (1996) 3 SCC 364

[2] Judgment in W.P.No.8697/05 dated 7-11-2005